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CHARLES ELMORE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1931.

No. 826

ED SPROLES ET AL., APPELLANTS,

vs.

T. BINFORD ET AL.

JOINT MOTION TO ADVANCE.

FRANK H. RAWLINGS,
CHAS. I. FRANCIS,
J. B. DUDLEY,
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W. B. BATES,
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W. L. COOK,
A. L. REED,
Of Counsel.

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JOINT MOTION TO ADVANCE.

MAY IT PLEASE THE COURT:

Come now the appellants and appellees in the above-entitled and numbered cause and respectfully move this Honorable Court that this case be advanced for early hearing and in support of their motion make the following brief statement of the matters involved and the reasons relied upon for the advancement:

I.

This suit was filed to have declared invalid H. B. 336, Chapter 282, page 507, Acts of the regular session of the 42nd Legislature of Texas. This law was enacted by the Texas Legislature at its regular session in May, 1931, and became effective August 22, 1931, except Section 5, which became effective January 1, 1932. The law prescribes the size of commercial motor vehicles that may be operated over the highways of the State of Texas and fixes the load that may be transported thereon. Some of the appellants operate their motor vehicles over the highways as common carriers; others, under private contract. The Yellow Cab Transit Company operates exclusively interstate. Appellants allege that many of the vehicles owned by appellants cannot be lawfully operated over the highways under the restrictions and limitations of the aforesaid statute. Section 5 of the statute limits the net load that may be transported on trucks to 7,000 pounds but prescribes no limit for commercial busses.

II.

Appellants in their respective petitions allege that such statute contains certain exemptions, exceptions and privileges which discriminate against them and make the law discriminatory and invalid under the 14th Amendment to the Constitution of the United States.

III.

The case was tried on its merits before a statutory three-judge court on the 23rd day of November, 1931. The Court overruled the contentions of appellants and dismissed their petitions for want of equity—the decree being dated December 31, 1931. Upon application of appellants the trial court granted a temporary injunction restraining appellees from enforcing Section 5 of the law dealing with the load limit, pending appeal to this Honorable Court. This injunction expires June 6, 1932.

IV.

The Court found, as a fact, that by reason of the size and weight and the cost of operation of trucks belonging to appellants that such trucks could not be operated when restricted to a load of 7,000 pounds, or less, except at a loss to complainant and interveners. Appellants allege that the vehicles owned by them and others similarly situated falling within this prohibited class are of the value of one hundred and fifty million dollars ($150,000,000.00); that all of said vehicles could be lawfully operated prior to the enactment of the statute complained of.

That under the registration laws of the State of Texas, for large commercial vehicles, such as owned by appellants, the cost of registration is at much higher rate than for smaller vehicles; that since the granting of the temporary injunction, pending appeal, appellants have registered their vehicles with the State of Texas

and paid excess license fees in the sum of approximately ten thousand five hundred dollars ($10,500.00); that appellants have no recourse to recover these excess fees.

V.

That one of the conditions upon which the injunction, pending appeal, was granted is that appellants will prosecute the appeal with diligence and use every reasonable effort to secure an early decision by this Honorable Court. If the appeal is not decided before June 6, 1932, appellants will lose the protection of injunction pending appeal and appellants allege that they will be unable to operate their vehicles notwithstanding the fact that they have paid to the State of Texas license fees in the above amount for this privilege. Some of the appellants are operating as common carriers under certificates of convenience and necessity issued by the Railroad Commission of the State of Texas, which require them to render daily service over fixed routes and at rates prescribed by the Commission. Appellants allege that if this appeal is not decided before June 6, 1932, such appellants will be unable to use their equipment to discharge the obligations under their certificates of convenience and necessity aforesaid and will suffer irreparable loss for which they have no remedy.

VI.

Appellants and appellees agree that the facts and circumstances in this case justify an advancement of the cause upon the calendar of this Court and an assignment for hearing at an early date.

WHEREFORE appellants and appellees pray that the case be advanced upon the calendar and assigned for hearing at an early date.

Respectfully submitted,

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